

² Together with his appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated July 21, 2020, the Board denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 19-1154 (issued July 21, 2020).

ISSUE

The issue is whether appellant has met his burden of proof to establish more than eight percent monaural hearing loss of his right ear, for which he previously received schedule award compensation.

FACTUAL HISTORY

On July 14, 2017 appellant, then a 62-year-old boiler plant equipment mechanic, filed an occupational disease claim (Form CA-2) alleging that he sustained hearing loss and ringing in both ears and periodic sharp pain in his right ear due to exposure to hazardous noise at work. He advised that he first became aware of his condition on January 1, 2010 and first realized its relation to his federal employment on June 1, 2010. Appellant did not stop work.

Appellant submitted a job description for the position of boiler plant equipment mechanic. He also submitted audiograms, obtained by the employing establishment, which were dated April 7, 2000, July 23 and 24, 2013, June 26 and July 1, 2014, and June 22, 2017. The audiograms were not certified as accurate by a physician as defined under FECA and did not show ratable hearing loss. In a July 1, 2014 report, Dr. Michael J. McBeth, a Board-certified family medicine physician for the employing establishment, diagnosed asymmetrical sensorineural hearing loss.

In a July 21, 2017 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of his claim. It requested that he complete and return a questionnaire about his work history and exposure to hazardous noise in the workplace. In a letter of even date, OWCP also requested information from the employing establishment regarding appellant's work history and noise exposure. It afforded both parties 30 days to respond.

In response, appellant submitted a July 26, 2017 statement which indicated that he worked as a boiler plant equipment mechanic for the employing establishment commencing November 19, 1976. He advised that he had worked starting in May 1996 at Hurlburt Field in the same job class. Appellant reported noise exposure from air conditioners (screw chillers), air compressors, cooling and heating pumps, air handlers, exhaust fans, and chemical feeders for an average of five hours per day. He asserted that, since January 2010, he had "failed" hearing tests administered by the employing establishment and that, since approximately 2013, he experienced ringing in both ears, as well as sharp pain in his right ear at least three times per week. In an undated supplemental statement, appellant advised that earplugs had been made available to him in the workplace. He also noted exposure to noise from F-22 jets when he was outside on the base grounds. Appellant indicated that he had no hobbies which involve exposure to loud noises.

Appellant submitted March 12 and 20 and April 24, 2009 reports from Dr. Jason Boole, a Board-certified otolaryngologist, who diagnosed sudden sensorineural hearing loss. In the March 12, 2009 report, he noted, "The likely etiology is autoimmune given his history of rheumatoid arthritis and possibly this could be a viral insult." An April 6, 2009 magnetic resonance imaging (MRI) scan contained an impression of normal internal auditory canals.

In an undated statement received by OWCP on September 14, 2017, appellant's immediate supervisor advised that he concurred with the description of work-related sources of noise

appellant provided in his July 26, 2017 statement. The supervisor noted that appellant was exposed to these noises four to six hours per day. In a September 18, 2017 letter, an injury compensation specialist indicated that the employing establishment was challenging appellant's claim because he failed to submit medical evidence relating a hearing loss condition to his federal employment.³ The employing establishment submitted copies of audiograms and other medical records previously submitted by appellant.

On September 27, 2017 OWCP referred appellant and the case record, including a statement of accepted facts (SOAF), for a second opinion examination to Dr. James McQueen, a Board-certified otolaryngologist. It requested that Dr. McQueen perform otologic and audiologic testing on appellant to evaluate his claimed hearing loss and its possible relation to federal employment.

In an October 25, 2017 report, Dr. McQueen reported the results of his otologic and audiologic evaluation, including the findings of an audiogram obtained on the same date. He diagnosed bilateral sensorineural hearing loss and bilateral tinnitus, and he noted that appellant's hearing loss was due, in part or in whole, to noise exposure from his federal employment. Dr. McQueen maintained that the high frequency notched hearing loss was consistent with noise exposure. He confirmed the accuracy of the October 25, 2017 audiogram, noting that testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 Hertz (Hz) revealed decibel (dB) losses of 20, 15, 50, and 35 respectively, and that testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses of 15, 15, 35, and 20 respectively.

On December 4, 2017 OWCP requested that Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as an OWCP district medical adviser (DMA), review the SOAF which had been sent to the DMA which included the accepted conditions of bilateral sensorineural hearing loss and tinnitus and Dr. McQueen's October 25, 2017 findings and provide an opinion on appellant's hearing loss under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴

On December 8, 2017 the DMA discussed the October 25, 2017 audiogram obtained by Dr. McQueen, noting that its hearing loss patterns were suggestive of sensorineural hearing loss at least in part due to work-related acoustic trauma from noise. He advised that appellant reached maximum medical improvement (MMI) on October 25, 2017. The DMA then provided a calculation of hearing loss, based on Dr. McQueen's October 25, 2017 findings, by utilizing the standards of the sixth edition of the A.M.A., *Guides*. Testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses of 20, 15, 50, and 35 respectively. The DMA added these figures and divided the resultant figure of 120 dBs by 4 to yield an average hearing loss of 30 dBs. This average loss when reduced by 25 dBs (25 dBs being discounted) equals 5 which when multiplied by the established factor of 1.5 to equal, after rounding up the resultant figure, an eight percent hearing loss in the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses of 15, 15, 35, and 20

³ The employing establishment also submitted an unsigned and undated form report containing further details regarding appellant's exposure to noise at work.

⁴ A.M.A., *Guides* (6th ed. 2009).

respectively. The DMA added these figures and divided the resultant figure of 85 dBs by 4 to yield an average hearing loss of 21.25 dBs. This average loss was then reduced by 25 dBs to equal a value less than zero and therefore appellant had zero percent hearing loss of the left ear. To compute the binaural hearing loss, the DMA multiplied the lesser loss in the left ear (zero percent) by the established factor of 5, added the resultant figure to the 7.5 percent loss in the right ear, and divided the sum by the established factor of 6 to calculate a 1.3 percent binaural hearing loss (1.25 percent rounded up to 1.3 percent). He indicated that a hearing aid was authorized for appellant.

On December 13, 2017 OWCP accepted that appellant sustained bilateral sensorineural hearing loss and bilateral tinnitus.

On October 26, 2018 appellant filed a claim for a schedule award (Form CA-7) due to hearing loss.

By decision dated March 6, 2019, OWCP granted appellant a schedule award for eight percent monaural hearing loss of his right ear. The award ran for 4.16 weeks from October 25 to November 23, 2017 and was based on the December 8, 2017 report of the DMA which evaluated the October 25, 2017 examination findings of Dr. McQueen.

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and its implementing regulation⁶ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷ The Board has approved OWCP's use of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule losses purposes.⁸

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁹ Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are added up and averaged.¹⁰ Then, the "fence" of 25 dBs is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁸ *K.J.*, Docket No. 19-1492 (issued February 26, 2020); *Isidoro Rivera*, 12 ECAB 348 (1961).

⁹ A.M.A., *Guides* 250-51 (6th ed. 2009).

¹⁰ *Id.*

everyday speech under everyday conditions.¹¹ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹² The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss, the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.¹³ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹⁴

Regarding tinnitus, the A.M.A., *Guides* provides that tinnitus is not a disease, but rather a symptom that may be the result of disease or injury.¹⁵ The A.M.A., *Guides* notes that, if tinnitus interferes with the activities of daily living, including sleep, reading (and other tasks requiring concentration), enjoyment of quiet recreation, and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.¹⁶

ANALYSIS

The Board finds that the case is not in posture for decision.

OWCP properly referred appellant to Dr. McQueen for a second opinion examination to determine his entitlement to a schedule award for his hearing loss.¹⁷ Dr. McQueen's October 25, 2017 report reviewed appellant's audiogram findings and concluded that his bilateral hearing loss and tinnitus were due to his workplace noise exposure.

On December 8, 2017 Dr. Israel, serving as OWCP's DMA, reviewed the otologic and audiologic testing performed on appellant by Dr. McQueen on October 25, 2017 and properly applied OWCP's standardized procedures to this evaluation. Testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses of 20, 15, 50, and 35 respectively. The DMA added these figures and divided the resultant figure of 120 dBs by 4 to yield an average hearing loss of 30 dBs. This average loss when reduced by 25 dBs (25 dBs being discounted as discussed above) equals 5 which when multiplied by the established factor of 1.5 to equal, after rounding up the resultant figure, an eight percent hearing loss in the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses of 15, 15, 35, and 20 respectively. The DMA added these figures and divided the resultant figure of 85

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *M.F.*, Docket No. 16-1565 (issued March 15, 2017); *Donald Stockstad*, 53 ECAB 301 (2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹⁵ See A.M.A., *Guides* 249.

¹⁶ *Id.* See also *R.R.*, Docket No. 20-0245 (issued June 22, 2020); *Robert E. Cullison*, 55 ECAB 570 (2004).

¹⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6d (March 2017) (regarding referral for a second opinion evaluation when an impairment rating from an attending physician has not been provided).

dBs by 4 to yield an average hearing loss of 21.25 dBs. This average loss was then reduced by 25 dBs (25 dBs being discounted as discussed above) to equal a value less than zero and therefore appellant had zero percent hearing loss of the left ear.¹⁸

However, the Board finds that OWCP did not properly develop appellant's degree of impairment for his accepted bilateral tinnitus in that it made no determination on this matter. As noted above, the A.M.A., *Guides* provides that, if tinnitus interferes with activities of daily living, such as sleep, reading, enjoyment of quiet recreation, and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.¹⁹

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.²⁰ While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.²¹ Once OWCP undertook development of the evidence it had a duty to secure an appropriate report addressing the relevant issues.²²

OWCP did not obtain the appropriate documentation, such as a tinnitus handicap inventory or similar survey, to evaluate appellant's schedule award claim with respect to his accepted bilateral tinnitus condition.²³ Since it did not obtain the necessary evidence to properly determine appellant's entitlement to an award for his bilateral tinnitus (in conjunction with his schedule award for hearing loss), the case will be remanded to OWCP to obtain the necessary documentation and make a proper determination on this matter.²⁴ Following this and any necessary further development, OWCP shall issue a *de novo* decision on appellant's claim for a schedule award.

¹⁸ To compute the binaural hearing loss, the DMA multiplied the lesser loss in the left ear (0 percent) by the established factor of 5, added the resultant figure to the 7.5 percent loss in the right ear, and divided the sum by the established factor of 6 to calculate a 1.3 percent binaural hearing loss (1.25 percent rounded up to 1.3 percent). While section 8107(c)(13) provides separate calculations for loss of hearing in one ear and for loss of hearing in both, if calculations based on the monaural hearing loss would result in greater compensation than calculations for binaural loss, then the monaural hearing loss calculations should be used. FECA provides that a claimant is entitled to 52 weeks of compensation for 100 percent loss of hearing in one ear and 200 weeks' compensation for 100 percent hearing loss in both ears. Appellant's rating is greater under the procedures used for calculating monaural hearing loss and therefore OWCP properly granted a schedule award for monaural hearing loss. *See supra* note 13; 5 U.S.C. § 8107(c)(13)(B); *Andrew P. Bell*, Docket No. 06-0292 (issued April 6, 2006); *Clarence L. Weeks*, 38 ECAB 613 (1987) (quoting FECA Program Memorandum No. 181 (November 26, 1974)).

¹⁹ *See supra* note 16.

²⁰ *T.O.*, Docket No. 18-0659 (issued August 8, 2019).

²¹ *T.O.*, *id.*; *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *Jimmy A. Hammons*, 51 ECAB 219 (1999).

²² *T.O.*, *id.*; *Peter C. Belkind*, 56 ECAB 580 (2005); *Ayanle A. Hashi*, 56 ECAB 234 (2004).

²³ *See A.M.A., Guides* 249.

²⁴ *J.E.*, Docket No. 19-1620 (issued March 9, 2020); *D.L.*, Docket No. 19-0987 (issued October 23, 2019).

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2019 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: September 8, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board